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UNITED STATES OF AMERICA

10
11 UNITED STATES DISTRICT COURT

12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 UNITED STATES OF AMERICA,

No. 2:23-cr-00524-DMG

14 Plaintiff,

GOVERNMENT'S EX PARTE MOTION FOR
A PROTECTIVE ORDER REGARDING
DISCOVERY CONTAINING: PERSONAL
IDENTIFYING INFORMATION, PRIVACY
ACT INFORMATION, CONFIDENTIAL
INFORMANT, AND COOPERATING
WITNESS INFORMATION; MEMORANDUM
OF POINTS AND AUTHORITIES

15 v.

16 EDGAR JOEL MARTINEZ-REYES, ET
AL.,

17 Defendants.

18
19 Plaintiff, United States of America, by and through its counsel
20 of record, the United States Attorney for the Central District of
21 California and Assistant United States Attorney Julie J. Shemitz,
22 for the reasons set forth below, hereby moves this Court for a
23 protective order in the form filed concurrently herewith (the
24 "Protective Order"), governing the use and dissemination of
25 (1) personal identifying information ("PII") of real persons
26 pursuant to Federal Rule of Criminal Procedure Rule 16(d)(1),
27 (2) material that may contain information within the scope of the

1 Privacy Act, and (3) information related to confidential
2 informant(s) and/or cooperating witness(es) who may testify at
3 trial.

4 In support of this motion, the United States submits the
5 attached memorandum of points and authorities, the declaration of
6 Julie J. Shemitz, and the proposed protective order.

7 DATED: January 8, 2024

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United States Attorney

MACK E. JENKINS
Assistant United States Attorney
Chief, Criminal Division

/s/

JULIE J. SHEMITZ
Assistant United States Attorney

Attorneys for Plaintiff
UNITED STATES OF AMERICA

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION AND GROUNDS FOR PROTECTIVE ORDER**

3 1. Defendants are charged in this matter with violations of
4 21 U.S.C. § 846: conspiracy to aid and abet the distribution of
5 cocaine and methamphetamine; 18 U.S.C. §§ 1956(h), (a)(1):
6 conspiracy to launder monetary instruments; and 18 U.S.C. §§ 371,
7 1960: conspiracy to operate an unlicensed money remitting business;
8 and related substantive charges.

9 2. A protective order is necessary because the government
10 intends to produce to the defense materials regarding confidential
11 informants and/or cooperating witnesses who participated in the
12 government's investigation and who may testify at trial ("CS
13 material"). Because these materials could be used to identify the
14 confidential informants or cooperating witnesses, the government
15 believes that the unauthorized dissemination or distribution of the
16 materials may expose them to potential safety risks. In particular,
17 because of the nature of criminal organizations, secrecy and
18 discretion are of paramount importance and cooperation with law
19 enforcement officials is a grave violation of protocol, and subjects
20 cooperators to suspicion, threats, and various forms of harm ranging
21 from economic harm to death. It is therefore prudent to take
22 precautions when disclosing information that could lead to the
23 discovery of the identities of cooperators.

24 3. A protective order is also necessary because the
25 government intends to produce to the defense materials containing
26 third parties' PII. The government believes that disclosure of this
27 information without limitation risks the privacy and security of the
28 information's legitimate owners. Because the government has an

1 ongoing obligation to protect third parties' PII, the government
2 cannot produce to defendant an unredacted set of discovery
3 containing this information without the Court entering the
4 Protective Order.

5 4. An order is also necessary because the government intends
6 to produce to the defense materials that may contain information
7 within the scope of the Privacy Act, 5 U.S.C. § 552a ("Privacy Act
8 Information"). To the extent that these materials contain Privacy
9 Act Information, an order is necessary to authorize disclosure
10 pursuant to 5 U.S.C. § 552a(b) (11).

11 5. The purpose of the Protective Order is to (a) allow the
12 government to promptly comply with its discovery obligations while
13 protecting this sensitive information from unauthorized
14 dissemination, and (b) provide the defense with sufficient
15 information to adequately represent defendants.

16 **II. FACTUAL BACKGROUND**

17 1. The Indictment alleges in Count One a conspiracy to aid
18 and abet drug trafficking in violation of 21 U.S.C. § 846; in Count
19 Two a conspiracy to launder monetary instruments in violation of 18
20 U.S.C. § 1956(h); and in Count Seven a conspiracy to operate an
21 unlicensed money remitting business. The Indictment also alleges
22 several counts of drug distribution in violation of 21 U.S.C.
23 § 841(a)(1)(A) and (B) as well as related charges. This case stems
24 from a long-term investigation into the laundering of drug proceeds.
25 Members of this organization have secretly collected, stored,
26 sorted, counted, packaged, and delivered drug proceeds to customers
27 individuals who participate in the laundering process.

28

1 2. Defendants Edgar Joel Martinez-Reyes (1), Raul Contreras
2 (2), Oscar Eduardo Mayorga (3), Guillermo Zambrano (5), Bernardo
3 Mauberis (7), Vidal Licon-Robles (8), Victor Rodriguez-Trujillo
4 (11), Julio Alejandro Cabrera (12), Jose Antonio Pardo (13), and
5 Jiande Zhou (14) have been granted bond and are awaiting trial.
6 Defendants Luis Belandria-Contreras (4), Diego Acosta Ovalle (6),
7 Leo Bernal (9), and Daniel Gonzalez, aka Rafael Arrocho (10) have
8 not yet been apprehended.

9 3. The parties have conferred via email and agree that a
10 protective order is necessary in this case to facilitate the
11 disclosure of discovery. The government has transmitted this
12 application and the proposed order to counsel for the parties who
13 have made appearances in this case and has received comments from
14 defense counsel that are noted below.

15 **III. PROPOSED PROTECTIVE ORDER AND DISPUTED PROVISIONS**

16 **A. Disputed Provisions**

17 The terms of the order sought by the government include
18 specific procedures to be followed for the handling of three types
19 of material: CS material, Privacy Act material, and Personal
20 Identifying Information ("PII"). The strictures related to CS
21 material are more stringent than those applied to the other two
22 categories of discovery. The provisions of the proposed order that
23 are in dispute are as follows:

24 • That witnesses must agree in writing to abide by the
25 protective order prior to being shown the material;
26 • That CS material may not be left unattended in any
27 vehicle;

- 1 • That "defense team" includes only attorneys of record and
2 members of those attorneys' law firms; and,
- 3 • That CS material must be returned or certified destroyed
4 within 30 days of the conclusion of appellate and post-
5 conviction proceedings.

6 The stated grounds for these objections are that: (1) requiring
7 witnesses to agree in writing to the provisions of the protective
8 order prior to being shown the material would discourage reluctant
9 witnesses; (2) it is overly burdensome to counsel to preclude them
10 from keeping unattended CS material in a vehicle; (3) that they
11 should be able to show the material to attorney]s outside their own
12 law firms (even if not attorneys of record); and (4) CS material
13 should be treated the same way as other case material. For the
14 legal and commonsense reasons set out below, these objections should
15 be overruled, and the requested protective order should be issued.

16 **B. Rationale For Proposed Provisions**

17 The language of the disputed provisions has previously been
18 adopted by this Court as well as many of the other courts in this
19 district. Each is necessary to guard against improper dissemination
20 of the discovery materials at issue.

21 First, witnesses must be apprised of and agree to the
22 limitations on the use of material they may be shown during trial
23 preparation. Having witnesses sign to acknowledge their
24 understanding and agreement is an assurance that they will adhere to
25 those limitations and be held accountable.

26 With respect to the prohibition on leaving CS material in an
27 unattended vehicle, it is neither onerous nor unreasonable - just as
28 individuals guard their own personal paperwork, and would be foolish

1 to leave private material in an unguarded vehicle, so should CS
2 material, which may pose grave danger to a cooperating individual,
3 be protected. Locking a vehicle containing sensitive information
4 and leaving it on a street or in a parking lot is no assurance that
5 the vehicle will not be vandalized and the material stolen. The
6 amount of material at issue here is not so voluminous or weighty
7 that requiring defense counsel to keep it in their possession would
8 be an onerous burden.

9 No attorney other than the attorney of record for a particular
10 defendant is entitled to access discovery material. Only an
11 attorney of record is under the supervision of the Court and has the
12 obligations to the Court inherent in that role. For this reason, it
13 is incumbent on the attorney of record to maintain the
14 confidentiality of CS and other protected material and not
15 disseminate it outside that attorney's law firm. In addition, as
16 this Court knows, many confidential sources are used in more than
17 one investigation and disclosure of the activities and/or identities
18 of those individuals is likely to place the confidential sources in
19 jeopardy. When counsel other than counsel of record have access,
20 they may be viewing material related to an investigation in which
21 they represent a different defendant. This would be an unrecognized
22 conflict of interest. The purpose of the protective order is to
23 limit the dissemination of CS and other confidential information to
24 prevent such a situation.

25 Finally, it is critical to sound record-keeping and protection
26 of the confidential information that it be returned to the
27 government or certified destroyed after the conclusion of appellate
28 and post-conviction procedures. This is not in any way an

1 unreasonable restriction and there is no reason for that material to
2 be maintained by defense counsel after the conclusion of the matter.
3 Doing so creates the risk of unintended dissemination or loss, an
4 unacceptable situation for the protection of a confidential source.

5 The remaining provisions are also matters of common sense.
6 Attorney supervision of CS material is necessary to be certain that
7 defendants and witnesses adhere to the limitations set out in the
8 protective order. Only an attorney has the duties to the Court
9 inherent in bar membership that ensure compliance with the Court's
10 orders, and therefore only an attorney can be entrusted with the
11 handling of this sensitive material. Attorneys have strict ethical
12 duties and are officers of the court, which provides a greater
13 assurance that the information will be adequately protected.
14 Counsel of record also will have to answer to the court in the event
15 the protective order is violated. It is therefore important for
16 counsel of record to be present when the risk to the cooperating
17 witness is highest; that is, when a defendant is accessing CS
18 material.

19 **IV. LEGAL FRAMEWORK**

20 "At any time, the court may, for good cause, deny,
21 restrict, or defer discovery or inspection, or grant other
22 appropriate relief." Fed. R. Crim. Proc. 16(d)(1). In determining
23 whether a protective order is appropriate, courts may consider a
24 variety of factors, including the "safety of witnesses and others."
25 Fed. R. Crim. Proc. 16 advisory committee's note to 1966 amendment;
26 see also United States v. Dent, No. SA CR 16-29(B)-CJC, 2017 WL
27 1025162 (C.D. Cal. Mar. 15, 2017); United States v. Fort, 472 F.3d
28 1106, 1131 (9th Cir. 2007) ("The Rules Advisory Committee

1 specifically designed Rule 16(d)(1) to provide a mechanism to
2 protect witness safety, and to grant considerable discretion to the
3 district court in drafting orders under that rule. See Fed.R.Crim.P.
4 16 advisory committee's note (1974 Amendment).") Indeed, Rule 16's
5 advisory committee notes provide that "it is obvious that [a
6 protective order] would be appropriate where there is reason to
7 believe that a witness would be subject to physical or economic harm
8 if his identity is revealed." Id. Thus, a court properly exercises
9 its discretion in imposing a protective order in circumstances such
10 as in this case.

11 Here, a protective order is necessary to permit the government
12 to promptly produce discovery related to the witnesses, while at the
13 same time preserving the security of those individuals. Because the
14 CS material could be used to identify individuals who have agreed to
15 cooperate with the government, unauthorized dissemination or
16 distribution of this material may compromise the ability of such
17 persons to participate effectively in future investigations in an
18 undercover capacity and/or may expose them to potential safety
19 risks. A protective order placing limitations on the use of
20 discovery is therefore appropriate.

21 **V. CONCLUSION**

22 For all the foregoing reasons, the United States
23 respectfully requests that this Court impose the proposed protective
24 order filed concurrently herewith.

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